

## **REMARKS/ARGUMENTS**

### **1.) Allowable Subject Matter**

The Applicant thanks the Examiner for the allowance of claims 20, 21, 41 and 42. The Examiner also objected to claims 5-9, 11-18, 26-30 and 32-39 as being dependent upon rejected base claims, but stated they would be allowable if rewritten in independent form including all of the limitations of their respective base claims and any intervening claims.

### **2.) Examiner Objections - Claims**

The Examiner objected to claims 1 and 22 because of certain spelling errors. The Applicant has amended those claims as suggested by the Examiner.

### **3.) Claim Rejections – 35 U.S.C. §112, 1<sup>st</sup> Paragraph**

The Examiner rejected claims 2 and 23 as failing to comply with the enablement requirement on the asserted basis that the term "superposition" is unclear. Those skilled in the art are familiar with the principle of superposition, which holds that two or more solutions to a linear equation or set of linear equations can be added together so that their sum is also a solution; see: <http://www.answers.com/topic/superposition-principle?cat=technology>). Therefore, the Applicants traverse the Examiner's assertion that such terminology is "unclear."

### **4.) Claim Rejections – 35 U.S.C. §103(a)**

The Examiner rejected claims 1, 19, 22 and 40 as being unpatentable over Sabry (U.S. Patent No. 6,628,612) in view of Andrews (U.S. Patent No. 6,771,598) and Racz (U.S. Patent Publication No. 2002/0176360); claims 3, 10, 24 and 31 as being unpatentable over Sabry in view of Andrews, Racz and Beshai (U.S. Patent No. 5,881,049); and claims 4 and 25 as being unpatentable over Sabry in view of Andrews, Racz and Knightly (US 6,801,501). The Applicants traverse the rejections.

First, in order to establish a *prima facie* case of obviousness, as required in view of the case law interpreting 35 U.S.C. §103 and as instructed in Section 706.02(j) of the

Manual of Patent Examining Procedure, the Examiner must set forth in the Office action: the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate; the difference or differences in the claim over the applied reference(s); the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and, an explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made. The Examiner has not met those requirements in the present Office Action.

In rejecting claim 1, the Examiner relies on three references: Sabry, Andrews and Racz. Standing individually, the Examiner acknowledges that each fails to teach the claimed invention. Therefore, the question is whether one of ordinary skill in the art would, in view of those teachings, arrive at the claimed invention. The answer is no, and the Examiner fails to provide any support for his conclusory statement that it would be obvious to one of ordinary skill to do so. The Applicants note that the Examiner has not identified several claim limitations in any of those three references. For example, the Examiner asserts that Sabry teaches a non-linear admissible region "that contains a set of traffic mixes that fulfill a given overload requirement," yet the Examiner does not point to any teaching of such limitation in Sabry. That claim element is further qualified by the limitation that the non-linear admissible region has dimensions that "are the number of connections in . . . respective service classes," which the Examiner vaguely asserts are taught in Figures 2 and 5, which illustrate "equivalent bandwidth" and "maximum allowed bandwidth."

Putting aside the question of whether Sabry adequately discloses the first portion of claim 1, the Examiner does acknowledge that Sabry fails to teach the second and third portions of that claim. The Examiner then looks to the teachings of Andrews and asserts that it teaches the second portion of claim 1. For support of the Examiner's position, he merely refers to Figure 4 of Andrews, which includes a region "Admissible Region" as a function of a number of Class-I and Class-II connections. There is no teaching in that figure, or the description relating thereto, of the other aspects of the claim limitations, such as the checking function being performed "for each of a number

of . . . service classes, whether [the] traffic mix is contained within a class-specific *delay-limited* admissible region . . . " Thus, Andrews also fails to teach that which the Examiner asserts. The Examiner, however, does acknowledge that Andrews also fails to teach the third portion of the claim, for which deficiency he looks to the teachings of Racz. Racz, however, also fails to teach that which the Examiner asserts. Even if each of the references taught what the Examiner has asserted, and if Andrews cured the deficiencies of Sabry, and Racz cured the collective deficiencies of Sabry and Andrews, the Examiner has not provided any support for combining those references to arrive at the claimed invention. It appears that the Examiner is using impermissible hindsight to pick and choose from the prior art using the Applicants' claimed invention as a template. Such hindsight is impermissible and, therefore, the Examiner has not established a *prima facie* case of obviousness of claim 1.

Whereas claim 22 recites limitations analogous to those of claim 1, that claim is also not obvious over Sabry in view of Andrews and Racz. Furthermore, whereas claims 3 and 10 are dependent from claim 1 and claims 24 and 31 are dependent from claim 22, and include the limitations of their respective base claims, those claims are also not obvious over Sabry in view of Andrews, Racz and Beshai. Likewise, whereas claims 4 and 25 are dependent from claims 1 and 22, respectively, and include the limitations of their respective base claims, those claims are also not obvious over Sabry in view of Andrews, Racz and Knightly.

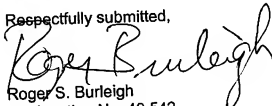
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**CONCLUSION**

In view of the foregoing amendments and remarks, the Applicants believe all of the claims currently pending in the Application to be in a condition for allowance. The Applicants, therefore, respectfully request that the Examiner withdraw all rejections and issue a Notice of Allowance for claims 1-42.

The Applicants request a telephonic interview if the Examiner has any questions or requires any additional information that would further or expedite the prosecution of the Application.

Respectfully submitted,



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